NO. 83992-1

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, PETITIONER

v.

MICHAEL DEROUN WILLIAMS, RESPONDENT

Court of Appeals, Division II
COA No. 37619-9

Pierce County Superior Case No. 07-1-06092-0

PETITIONER'S SUPPLEMENTAL BRIEF

MARK LINDQUIST
Prosecuting Attorney

By
KIMBERLEY DEMARCO
Deputy Prosecuting Attorney
WSB # 39218

930 Tacoma Avenue South
Room 946
Tacoma, WA 98402
PH: (253) 798-7400

ORIGINAL

Table of Contents

A. ISSUES PERTAINING TO SUPREME COURT REIVEW.

1. As a matter of law, may the State proceed with charges of obstructing a law enforcement officer, based on the words of defendant where defendant's assertions hindered or delayed the officer investigating defendant?.....1

2. Does an attorney provide effective assistance of counsel when she fails to raise a meritless claim? 1

B. STATEMENT OF THE CASE. 1

C. ARGUMENT.....6

1. THE STATE PROPERLY CHARGED AND CONVICTED DEFENDANT WITH OBSTRUCTING A LAW ENFORCEMENT OFFICER WHERE DEFENDANT PROVIDED FALSE INFORMATION TO OFFICERS DURING A CRIMINAL INVESTIGATION AND DELAYED OR HINDERED THE INVESTIGATION. 6

2. AS THE STATE COULD LEGALLY PURSUE OBSTRUCTION CHARGES BASED ON DEFNENDANT'S FALSE STATEMENTS, COUNSEL WAS NOT INEFFECTIVE FOR FAILING TO PURSUE THIS LINE OF ARGUMENT. 14

D. CONCLUSION. 16

Table of Authorities

State Cases

Bennett v. Hardy, 113 Wn.2d 912, 928, 784 P.2d 1258 (1990) 7

City of Sunnyside v. Wendt, 51 Wn. App. 846, 851-52, 755 P.2d 847 (1988) 8, 12

In re Davis, 152 Wn.2d 647, 714, 101 P.3d 1 (2004) 15

State v. Armendariz, 160 Wn.2d 106, 110, 156 P.3d 201 (2007) 7

State v. Contreras, 92 Wn. App. 307, 315-16, 966 P.2d 915 (1998) 8, 12

State v. Engel, 166 Wn.2d 572, 578, 210 P.3d 1007 (2009) 7

State v. Gonzalez, 168 Wn.2d 256, 226 P.3d 131, 134 (2010) 7

State v. Grant, 89 Wn.2d 678, 575 P.2d 210 (1978) 11

State v. J.P., 149 Wn.2d 444, 450, 69 P.3d 318 (2003) 7

State v. McFarland, 127 Wn.2d 322, 899 P.2d 1251 (1995) 14

State v. McNeal, 145 Wn.2d 352, 362, 37 P.3d 280 (2002) 15

State v. Neher, 112 Wn.2d 347, 351, 771 P.2d 330 (1989) 7

State v. Riley, 121 Wn.2d 22, 846 P.2d 1365 (1993) 14

State v. Thomas, 103 Wn. App. 800, 14 P.3d 854 (2000) 10

State v. Torres, 151 Wn. App. 378, 385, 212 P.3d 573 (2009) 7

State v. Turner, 103 Wn. App. 515, 525, 13 P.3d 234 (2000) 8, 12

State v. Ware, 111 Wn. App. 738, 742, 46 P.3d 280 (2002) 8

State v. Wentz, 149 Wn.2d 342, 346, 68 P.3d 282 (2003) 6

State v. White, 97 Wn.2d 92, 101, 640 P.2d 1061 (1982) 9, 11

State v. Williams, 152 Wn. App. 937, 219 P.3d 978 (2009) 6

State v. Williamson, 84 Wn. App. 37, 44-45, 924 P.2d 960 (1996) 8, 9, 10, 11

Federal and Other Jurisdictions

Lassiter v. City of Bremerton, 556 F.3d 1049 (9th Cir. 2009) 8

Constitutional Provisions

First Amendment, United States Constitution 9

Fourth Amendment, United States Constitution 9

Fifth Amendment, United States Constitution 9

Fourteenth Amendment, United States Constitution 9

Statutes

Former RCW 9A.76.020 ..... 9, 11

Former RCW 9A.76.020(1)(a) 10

Former RCW 9A.76.020(1)(b) 10

Laws of 1975, 1st Ex. Sess., ch. 260 9

Laws of 1994, ch. 196, § 1 9

Laws of 1995, ch 285 § 39 10

Laws of 1995, ch. 285, §§ 33 and 32 10

Laws of 2001, ch. 308, §§ 1, 4 10

RCW 9.69.060 11

RCW 9A.56.020 1

RCW 9A.56.030 1

RCW 9A.76.020 ..... 8, 10, 11, 12

RCW 9A.76.020(1) 1, 6, 7, 8, 10

RCW 9A.76.020(1)(a) 10

RCW 9A.76.175 ..... 1, 10, 12

Other Authorities

13A SETH A. FINE & DOUGLAS J. ENDE,
WASHINGTON PRACTICE: CRIMINAL LAW, § 1809,
at 375 n.5 (2d ed. 1998) 12

A. ISSUES PERTAINING TO SUPREME COURT REVIEW.

1. As a matter of law, may the State proceed with charges of obstructing a law enforcement officer, based on the words of defendant where defendant's assertions hindered or delayed the officer investigating defendant?

2. Does an attorney provide effective assistance of counsel when she fails to raise a meritless claim?

B. STATEMENT OF THE CASE.

MICHAEL D. WILLIAMS, hereinafter defendant, was charged by information in Pierce County Superior Court, cause number 07-1-06092-0, with first degree theft, making a false or misleading statement to a public servant and obstructing a law enforcement officer, contrary to RCW 9A.56.020, RCW 9A.56.030, RCW 9A.76.020(1), RCW 9A.76.175. CP[1] 1-2.

On December 3, 2007, defendant took his vehicle to a Les Schwab store in Fife, Washington, to replace the tires and rims. RP (01/31/08) 19, 22. After the work was completed, defendant attempted to pay with a check, but it was declined by Telecheck. RP (01/31/08) 24. Defendant was advised that they could not accept his check and he was asked

[1] Citations to the Clerk's Papers designated on direct appeal will be to "CP." As the trial transcripts were not numbered sequentially, citations to the verbatim report of proceedings will be to "RP," followed by the date and the page number.

whether he would like to put the matter on debit or credit. RP (01/31/08) 24. Defendant asked if Les Schwab needed to take the tires or rims off and he was told "no," not if there was another way for him to pay for the items. RP (01/31/08) 25.

Defendant agreed to go get some cash. RP (01/31/08) 25. The Les Schwab employee informed him that he would have to leave the vehicle and key until he returned with the payment. RP (01/31/08) 25. Defendant left Les Schwab between 2:00 and 2:30 p.m. and indicated that he would be right back. RP (01/31/08) 25-26. When defendant failed to return, the Les Schwab employee attempted to contact him with the phone number he left, but it was not working. RP (01/31/08) 27. The employee also noticed that, even though defendant had left a key, his vehicle was missing from the store's parking lot. RP (01/31/08) 27. The employee contacted police. RP (01/31/08) 27.

At the request of Fife police department, Federal Way officer Scott Parker responded to an address in Federal Way to check on whether the vehicle was at that address. RP (01/31/08) 42. Chelsea Pierce answered the door and stated that she owned the vehicle matching that description, and confirmed that her boyfriend had recently purchased rims and tires for her vehicle. RP (01/31/08) 43-44.

Defendant then came to the door and identified himself as Eric R. Williams, with a date of birth of 11/22/1977. RP (01/31/08) 70. He indicated that he recently purchased the tires and rims and explained that

Les Schwab was unable to take his check. RP (01/31/08) 44-45. Defendant told the officer that he had offered to give the tires and rims back, but the employees told him they did not want them back. RP (01/31/08) 45. Defendant said that he gave them the key to the vehicle, but he did not leave the vehicle itself. RP (01/31/08) 46. Defendant claimed he drove the vehicle to Seattle to take care of some business, and that he could not make it back to the Les Schwab dealership before it was closed. RP (01/31/08) 46.

When Officer Parker asked defendant if he had any identification, defendant denied having any identification on him. RP (01/31/08) 47. The officer then asked if there was another way to verify who he was. RP (01/31/08) 47. Defendant responded that he had a grandmother in Federal Way, but when the officer pressed further he denied knowing her address. RP (01/31/08) 47.

During Officer Parker's contact with defendant, he radioed back to Fife Officer Vrandenburg to apprise him of the contact with the suspect and suspect vehicle. RP (01/31/08) 54. Officer Vrandenburg went to Federal Way to meet with Officer Parker and defendant. RP (01/31/08) 55. Officer Vrandenburg asked defendant his name, and defendant again identified himself as "Eric R. Williams," with a date of birth of 11/22/77. RP (01/31/08) 56. Officer Vrandenburg checked with the Department of Licensing, and the name came back as "clear and current;" however the

physical description listed did not match defendant's appearance. RP (01/31/08) 56.

Officer Vrandenburg asked for further identification and defendant stated he did not have any. RP (01/31/08) 56. Defendant also denied knowing his address, social security number, or driver's license number. RP (01/31/08) 57. Officer Vrandenburg later confronted defendant with the name "Michael Williams," and defendant claimed that was his brother. RP (01/31/08) 59. When asked why his brother's name would be on the Les Schwab document, defendant stated he did not know. RP (01/31/08) 59.

Officer Vrandenburg asked defendant for the check written to Les Schwab, and defendant stated that he did not have it and that he had thrown it away. RP (01/31/08) 57. Officer Vrandenburg then inquired about what happened at Les Schwab and defendant gave him the same information he had given Officer Parker. RP (01/31/08) 57-59. Defendant further explained that at around 6:00 he tried to make a phone call to Les Schwab to let them know he would not make it before they closed and left a message. RP (01/31/08) 59. Officer Vrandenberg made later attempts to call Les Schwab and check their answering machine, but there was no answering machine available, and store employees later confirmed that there is no capability to leave messages with Les Schwab via machine. RP (02/04/08) 8-9.

Officer Vrandenburg placed defendant under arrest. RP (01/31/08) 59. Officer Vrandenburg transported who he believed to be "Eric R. Williams" to the Fife City Jail and held him until transport to Pierce County jail arrived. RP (01/31/08) 60. Officer Vrandenburg requested that jail staff do an administrative booking where they can obtain a name, fingerprint, and photographs since he felt there was a discrepancy with his identification. RP (01/31/08) 60. When the booking officer asked defendant his name, defendant replied "Michael Williams." RP (01/31/08) 60. The booking officer contacted Officer Vrandenburg and informed him of defendant's name and date of birth. RP (01/31/08) 61.

Once Officer Vrandenburg had this new information, he conducted a records check which revealed a felony warrant for DOC escape. RP (01/31/08) 61. After contacting Pierce County jail and obtaining a booking photo via e-mail, Officer Vrandenburg was able to verify defendant's identity. RP (01/31/08) 61. Officer Vrandenburg confronted defendant with the information, and defendant stated that he lied to him about his name because he had a warrant. RP (01/31/08) 61.

On January 31, 2007, the matter came before the Honorable Judge Serko, for a bench trial. Defendant was convicted as charged. CP 8-12, 35-36. Findings of Fact and Conclusions of Law were entered.

On April 11, 2008, Judge Serko imposed standard range sentences for each of the three offenses, 25 months for theft in the first degree, and

365 days for both misdemeanor offenses, concurrent to each other. CP 35-36.

Defendant appealed his obstruction conviction to Division II of the Court of Appeals on the basis that the statute prohibited only non-verbal conduct. ***State v. Williams***, 152 Wn. App. 937, 219 P.3d 978 (2009) (COA Case No. 37619-9). The court denied defendant's appeal, holding that the plain language of RCW 9A.76.020(1) criminalizes any willful act, verbal or non verbal, that hinders, delays, or obstructs a law enforcement officer acting within his or her official powers. *Id.* at 943.

The Supreme Court granted defendant's petition for discretionary review.

C. ARGUMENT.

1. THE STATE PROPERLY CHARGED AND CONVICTED DEFENDANT WITH OBSTRUCTING A LAW ENFORCEMENT OFFICER[2] WHERE DEFENDANT PROVIDED FALSE INFORMATION TO OFFICERS DURING A CRIMINAL INVESTIGATION AND DELAYED OR HINDERED THE INVESTIGATION.

Issues of statutory construction are reviewed under a do novo standard. ***State v. Wentz***, 149 Wn.2d 342, 346, 68 P.3d 282 (2003). When

---

[2] The State is limiting its argument to the issues raised on direct appeal and defendant's petition for review. Defendant has never raised any claim challenging multiple punishments imposed for obstructing a law enforcement officer and making a false statement to a public servant; therefore, those issues are not before this court.

interpreting a statute, courts must first look to the statute's language. ***State v. Gonzalez***, 168 Wn.2d 256, 226 P.3d 131, 134 (2010). Plain meaning "is to be discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." *Id.* citing ***State v. Engel***, 166 Wn.2d 572, 578, 210 P.3d 1007 (2009). Statutes are interpreted to give effect to all language in the statute and to render no portion meaningless or superfluous. ***State v. J.P.***, 149 Wn.2d 444, 450, 69 P.3d 318 (2003). The legislature is presumed to know the law in the area in which it is legislating, and statutes will not be construed in derogation of common law absent express legislative intent to change the law. ***State v. Torres***, 151 Wn. App. 378, 385, 212 P.3d 573 (2009).

Statutes are interpreted in a manner that best advances the legislative purpose. ***Bennett v. Hardy***, 113 Wn.2d 912, 928, 784 P.2d 1258 (1990). Strained meanings and absurd results should be avoided. ***State v. Neher***, 112 Wn.2d 347, 351, 771 P.2d 330 (1989). If the statute is unambiguous after a review of the plain meaning, the court's inquiry is at an end. ***State v. Armendariz***, 160 Wn.2d 106, 110, 156 P.3d 201 (2007).

A person is guilty of obstructing a law enforcement officer if the person willfully hinders, delays, or obstructs any law enforcement officer in the discharge of his or her official powers or duties. RCW 9A.76.020(1). Washington courts have distilled the statute to four main elements: 1) an action or inaction that hinders, delays, or obstructs a law

enforcement officer, 2) while the officer is in the midst of his official duties, 3) the defendant knows the officer is discharging a public duty, and 4) the action or inaction is done knowingly. ***Lassiter v. City of Bremerton***, 556 F.3d 1049 (9th Cir. 2009); ***State v. Ware***, 111 Wn. App. 738, 742, 46 P.3d 280 (2002); ***State v. Contreras***, 92 Wn. App. 307, 315-16, 966 P.2d 915 (1998); ***City of Sunnyside v. Wendt***, 51 Wn. App. 846, 851-52, 755 P.2d 847 (1988).

A mere refusal to answer questions cannot be the basis of an arrest for obstruction of a police officer. ***State v. Turner***, 103 Wn. App. 515, 525, 13 P.3d 234 (2000); ***Contreras***, 92 Wn. App. at 316. The affirmative act of giving false information, however, can support an arrest and conviction under RCW 9A.76.020(1). ***Contreras***, 92 Wn. App. at 317 (citing ***Wendt***, 51 Wn. App. at 851-52).

Defendant argues that providing false information cannot legally constitute obstruction based on several cases decided prior to the Legislature's amendment of RCW 9A.76.020. Defendant fails to fully consider both the plain language of the current obstruction statute and its statutory development.

In ***Williamson***, the case which is the backbone of defendant's entire argument to this court, the court held that the giving of a false name to a police officer did not constitute obstruction under an earlier version of RCW 9A.76.020. ***State v. Williamson***, 84 Wn. App. 37, 44-45, 924 P.2d 960 (1996). As originally enacted, the crime of "obstructing a public

servant" could be committed by (1) refusing or neglecting to make or furnish any statement or report lawfully required by a public servant; (2) making a willfully untrue or misleading statement in such report, or (3) willfully hindering, delaying, or obstructing a public servant in the discharge of official powers or duties. *Former* RCW 9A.76.020 (Laws of 1975, 1st Ex. Sess., ch. 260); ***Williamson***, 84 Wn. App. at 43.

In 1982, the Supreme Court invalidated sections (1) and (2), holding that they were unconstitutionally vague. ***State v. White***, 97 Wn.2d 92, 101, 640 P.2d 1061 (1982). The Court determined that the existence of "stop-and-identify" statutes such as sections (1) and (2) undermined the probable cause requirement of the 1st, 4th, 5th, and 14th Amendments. *Id.* at 96-97. The Court held that the statute failed to give a fair notice of what activities were required or forbidden and it encouraged arbitrary and erratic stops and arrests. *Id.* at 99.

Prosecutors subsequently attempted to charge persons who gave false names or information with obstruction under section (3), but reviewing courts rejected this approach after concluding that sections (1) and (2) had addressed false statements and that section (3) punished only obstructive conduct. ***Williamson***, 84 Wn. App. at 43.

The legislature subsequently amended the statute and renamed it "Obstructing a law enforcement officer." Former RCW 9A.76.020 (Laws of 1994, ch. 196, § 1). This version of the statute eliminated section (1), dealing with failing to make a required report, and created two alternative

means of committing the offense: the first covered false or misleading statements made to a law enforcement officer who had lawfully detained the defendant and the second was limited to obstructing law enforcement officers. *See* ***Williamson***, 84 Wn. App. at 44; former RCW 9A.76.020(1)(a) and (b).

In 1995, the legislature split the statute into two crimes: the obstructing statute was amended to cover only obstructing law enforcement officers and a new crime was created to cover making false or misleading statements to public servants. Laws of 1995, ch. 285, §§ 33 and 32; *see* RCW 9A.76.020(1) and RCW 9A.76.175. The legislature stated that the amendment was "necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions[.]" Laws of 1995, ch 285 § 39. In 2001, the legislature reenacted RCW 9A.76.020 in response to Division I's ruling in ***State v. Thomas***, 103 Wn. App. 800, 14 P.3d 854 (2000), which had the potential of invalidating the 1995 statute. Laws of 2001, ch. 308, §§ 1, 4.

The 1994 version was at issue in ***Williamson***, 84 Wn. App. at 44. This court held that by convicting the defendant of obstruction for making false statements, the trial court had either improperly characterized his statements as conduct under former RCW 9A.76.020(1)(b) or had convicted him of making false statements under former RCW 9A.76.020(1)(a), which constituted an uncharged alternative means of

committing the offense. ***Williamson***, 84 Wn. App. at 44-45. The court rejected an argument that the defendant's providing a false name was conduct rather than speech on the grounds that the defendant's behavior fell squarely within the subsection dealing with false statements. *Id.* at 45. The court held that to consider a false statement to be conduct would blur the ***White*** court's distinction between speech and conduct, which was a distinction critical to its constitutional analysis. *Id.* at 45.

The ***Williamson*** court did not, however, explain how the distinction was critical to White's constitutional analysis. Rather, the ***White*** court mentioned, in dicta, that it presumed Division I's discussion in ***State v. Grant***, 89 Wn.2d 678, 575 P.2d 210 (1978)[3] to apply to subsection (3) of the 1975 version of RCW 9A.76.020. ***White***, 97 Wn.2d at 96. ***White***'s constitutional analysis was limited as to whether subsections (1) and (2) of the original statute were "framed in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application." *Id.* at 98-99. The court found that the term "lawfully required" was too subjective; "lawful excuse" was inadequately defined; and "public servant" was too broad. *Id.* at 100. The ***White*** court did not basis its constitutional analysis on any distinction between speech and conduct.

---

[3] The ***Grant*** court found that RCW 9.69.060 focused on conduct, rather than speech. ***Grant***, 89 Wn.2d at 686.

The current version of the statute eliminates the distinction between speech and conduct, and the act of giving false information to a law enforcement officer can support a conviction under either RCW 9A.76.020 or RCW 9A.76.175. *See* ***Contreras***, 92 Wn. App. at 317; 13A SETH A. FINE & DOUGLAS J. ENDE, WASHINGTON PRACTICE: CRIMINAL LAW, § 1809, at 375 n.5 (2d ed. 1998). To hold that false speech cannot support a conviction under the current obstruction statute continues a distinction that was eliminated when the legislature removed all reference to speech in the statute. A plain reading of the statute as well as the elements of the crime contained within established case law supports using false statements as a basis of obstructing an officer, *if* the false statement was made in an effort to hinder, delay, or obstruct the officer in the performance of his official duties. Clearly it is not the content of the statement that is at issue, but the speaker's willful attempt to hinder, delay, or obstruct. *See* ***Contreras***, *supra* at 317 (upholding a conviction for obstruction where defendant refused to put hands in the air, keep his hands on top of the car *and* gave a false name); ***State v. Turner***, 103 Wn. App. 515, 525-26, 13 P.3d 234 (2000)(finding that, while a refusal to give a name to an officer does not support a conviction for obstruction, the defendant's refusal, combined with threats to the officer and lunging at the officer constituted obstruction); ***City of Sunnyside v. Wendt***, 51 Wn. App. at 851-52 (finding that where defendant gave a false

statement that he had no license in a traffic investigation he hindered the investigation).

Here, there can be no doubt that defendant's action of providing false information hindered, delayed, or obstructed the officers. Defendant not only gave officers a false name, but also falsely stated that he had no identification, he did not know his address, social security number, or his driver's license number, and that he left a message at Les Schwab. RP (01/31/08) 56-57; 59. Defendant admitted that he provided a false name and was evasive with all the officer's questions about his identity because he knew he had an arrest warrant. RP (02/04/08) 22. By defendant's own admission, his sole intent was to hinder, delay, and obstruct Officer Vrandenburg in the performance of his official duties. This is sufficient to sustain a conviction of obstruction.

The record also shows that Officer Vrandenburg was, in fact, hindered. After defendant gave a false name, Officer Vrandenburg checked with the Department of Licensing and discovered defendant was not who he claimed to be. RP (01/31/08) 56. He stayed with defendant for several minutes attempting to ascertain defendant's identity. *See* RP (01/31/08) 56-59. It was not until defendant was brought to the jail that defendant revealed his true name. RP (01/31/08) 60. Once Officer Vrandenburg found out defendant's name, he finally discovered defendant's outstanding warrant. RP (01/31/08) 61.

Because defendant willfully acted to hinder, delay, or obstruct Officer Vrandenburg, who was performing his official duties, defendant's behavior could support a conviction for obstruction.

2. AS THE STATE COULD LEGALLY PURSUE OBSTRUCTION CHARGES BASED ON DEFNENDANT'S FALSE STATEMENTS, COUNSEL WAS NOT INEFFECTIVE FOR FAILING TO PURSUE THIS LINE OF ARGUMENT.

To demonstrate ineffective assistance of counsel, an appellant must make two showings: (1) defense counsel's representation was deficient, i.e., it fell below an objective standard of reasonableness based on consideration of all the circumstances; and (2) defense counsel's deficient representation prejudiced the appellant, i.e., there is a reasonable probability that, except for counsel's unprofessional errors, the result of the proceeding would have been different. ***State v. McFarland***, 127 Wn.2d 322, 899 P.2d 1251 (1995). Moreover, to raise a claim of ineffective assistance of counsel for the first time on appeal, the defendant is required to establish from the trial record: 1) the facts necessary to adjudicate the claimed error; 2) the trial court would likely have granted the motion if it was made; and 3) the defense counsel had no legitimate tactical basis for not raising the motion in the trial court. ***McFarland***, 127 Wn.2d at 333-34; ***State v. Riley***, 121 Wn.2d 22, 846 P.2d 1365 (1993).

Where an appellant claims ineffective assistance of counsel for trial counsel's failure to object to the admission of evidence, the burden on the appellant is even higher. To prove that the failure of trial counsel to object to the admission of evidence rendered the trial counsel ineffective, the appellant must show that: not objecting fell below prevailing professional norms; that the proposed objection would likely have been sustained; and that the result of the trial would have been different if the evidence had not been admitted. ***In re Davis***, 152 Wn.2d 647, 714, 101 P.3d 1 (2004). To prevail on this issue, the appellant must also rebut the presumption that the trial counsel's failure to object "can be characterized as legitimate trial strategy or tactics." ***Davis***, 152 Wn.2d at 714 (quoting ***State v. McNeal***, 145 Wn.2d 352, 362, 37 P.3d 280 (2002)). Deliberate tactical choices may only constitute ineffective assistance if they fall outside the wide range of professionally competent assistance, so that "exceptional deference must be given when evaluating counsel's strategic decisions." ***Davis***, 152 Wn.2d at 714 (quoting ***McNeal***, 145 Wn.2d at 362).

Because the State could legally pursue obstruction charges based on defendant's attempts to hinder Officer Vrandenburg's investigation, defense counsel was not ineffective for failing to pursue this line of argument.

D. CONCLUSION.

For the reasons stated above, the State respectfully requests this Court affirm the Court of Appeals decision and defendant's conviction for obstructing a law enforcement officer.

DATED: May 20, 2010

MARK LINDQUIST
Pierce County
Prosecuting Attorney

KIMBERLEY DEMARCO
Deputy Prosecuting Attorney
WSB # 39218

Certificate of Service:
The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

5/20/10
Date Signature